

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DURAN IRVIN,)	
Plaintiff,)	
)	
v.)	C.A. No. 04-10033-REK
)	
ANDREA CABRAL, et al.)	
Defendants.)	

MEMORANDUM AND ORDER

For the reasons set forth below, plaintiff is directed to either pay the requisite filing fee or submit an Application to Proceed Without Prepayment of Fees and Affidavit or this action will be dismissed without prejudice. The Clerk will also be directed to correct the docket.

BACKGROUND

On December 29, 2003, plaintiff, now incarcerated at the Suffolk County House of Correction, submitted for filing his self-prepared, civil rights complaint pursuant to 42 U.S.C. § 1983 alleging defendants Sheriff Andrea Cabrawl, Deputy Superintendent Mary Mastrorilli, Joanne Lynes and David McJames failed to provide plaintiff with certain jail credits. With his complaint, plaintiff filed (1) petition for a writ of habeas corpus ad testificandum; (2) Declaration in Support of Request for Leave to Proceed In Forma Pauperis; and (3) Notice of Litigation.

DISCUSSION

A party filing a civil complaint in this Court must either (1) pay the \$150.00 filing fee or (2) file an Application to Proceed Without Prepayment of Filing Fees and Affidavit. See 28 U.S.C. 1914(a) (\$5.00 filing fee); 28 U.S.C. 1915 (proceedings in forma pauperis).

Because plaintiff is incarcerated, he is advised that pursuant to 28 U.S.C. § 1915(b)(1), prisoners are required to pay the full amount of the filing fee. If plaintiff files an application to proceed without prepayment of fees, the Court will direct the appropriate prison official to withhold from his prison account and pay to the court an initial payment towards the \$150.00 filing fee. The appropriate prison official will also be directed to collect from plaintiff's prison account on a continuing basis each month until such time as the \$150.00 statutory filing fee is paid in full.

Plaintiff is further advised that if he pays the fee or files an Application to Proceed Without Prepayment of Fees and Affidavit, his complaint is subject to preliminary screening pursuant to 28 U.S.C. §§ 1915, 1915A.

Finally, the Court notes that the Clerk incorrectly entered on the docket plaintiff's petition for a writ of habeas corpus ad testificandum as a Petition for Writ of

Habeas Corpus pursuant to 28 U.S.C. § 2241. Additionally, the complaint misspells the name of the Suffolk County Sheriff, who is the only defendant listed on the docket. The Clerk shall be directed to correct the docket and to list the four defendants as follows: Sheriff Andrea Cabral, Deputy Superintendent Mary Mastrorilli, Joanne Lynes and David McJames.

ORDER

Based upon the foregoing, it is hereby ORDERED

1. If plaintiff wishes to proceed with this action, he shall file, within forty-two (42) days of the date of this Procedural Order, an Application to Proceed Without Prepayment of Fees and Affidavit or pay the \$150.00 filing fee or this action will be dismissed without prejudice. The Clerk is directed to send plaintiff an Application to Proceed Without Prepayment of Fees and Affidavit with this Order.
2. The Clerk shall correct docket entry number 1 by entering on the docket plaintiff's petition for a writ of habeas corpus ad testificandum.
3. The Clerk shall correct the cause of action for this case as a prisoner civil rights action pursuant to 42 U.S.C. § 1983.
4. The Clerk shall enter on the docket (1) plaintiff's civil rights complaint; (2) plaintiff's Declaration in Support of Request for Leave to Proceed In Forma Pauperis; and (3) plaintiff's Notice of Litigation.
5. The Clerk shall correct the docket so that it lists four defendants as follows: Sheriff Andrea Cabral, Deputy Superintendent Mary Mastrorilli, Joanne Lynes and David McJames.

SO ORDERED.

Dated at Boston, Massachusetts, this 21st day of January,
2004.

/s Robert E. Keeton

ROBERT E. KEETON
UNITED STATES SENIOR DISTRICT

JUDGE